In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 930

MANOUTCHEHR AADAL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A; II R. 37b-42b) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1966. A petition for rehearing was denied on December 7, 1966. The petition for a writ of certiorari was filed on January 3, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the delay in bringing petitioner to trial required reversal of his conviction, when he raised no objection to the delay at any time before or during trial.

2. Whether the evidence was sufficient to support the conviction.

3. Whether the trial court committed plain error in permitting an F. B. I. agent to testify concerning a voluntary post-arrest admission by petitioner made after he was warned of the consequences of his speaking and of his right to consult an attorney.

STATUTE INVOLVED

18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was convicted by a jury, in the United States District Court for the Southern District of New York, under forty-eight counts of an indictment charging that he and others, in violation of 18 U.S.C.

1001, knowingly made false statements in shippers' export declarations submitted to the Collector of Customs in 1958 and 1959 by describing rags worth ten cents a pound as good quality fabrics of a greater stated value (I R. 2a-7a4).[1] On July 12, 1966, petitioner was sentenced to imprisonment for four years on each count, the sentences to run concurrently (I R. 1a). The court of appeals affirmed the conviction (II R. 37b-43b).

1. In 1958, petitioner, who had spent most of his adult life in the import-export business, met in New York a man whom he had previously known in Iran, Hassan Rafati, a textile importer and exporter who did business under various names (II R. 24b, 26b-27b). Rafati showed petitioner letters of credit, drawn on New York banks, which called for the shipment to Iran of various amounts of textile piece goods for stipulated sums of money (II R. 24b, 26b). Petitioner agreed to work with Rafati in making purchases and shipments under the letters of credit. Later, they arranged for the purchase, crating and shipping of rags instead of the piece goods called for in the letters of credit (II R. 24b-26b).[2]

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[1] The indictment contained seventy-seven counts. Count 1, charging conspiracy to defraud the International Cooperation Administration of the Department of State by the use of false documents, was severed. Twenty-eight other counts, each charging the submission of a false shipper's export declaration, were dismissed by the court during trial (I R. 1a).

[2] "Piece goods" or "yard goods," in the terminology of the textile trade, are "more or less full bolts [of fabric] * * * rolled on tubes." "Rags" are scrap "from an inch up to three-quarters of a yard, in any condition, damaged condition, with holes or what have you." (II R. 7b.)

In January 1958, petitioner told Paul Rothman of a New York City textile company that he was interested in purchasing rags of the cheapest kind available, which he wanted packed in wooden crates (II R. 1b-3b). When Rothman asked petitioner why he wanted rags packed in wooden crates—a method of packing in which the freight charges could exceed the value of the rags—petitioner smiled but did not answer (II R. 11b-12b). They finally agreed that Rothman would supply petitioner with rags from his warehouse at twenty cents a pound, a price later cut to ten cents a pound (II R. 3b, 10b); that Rothman would pack the rags in wooden crates supplied by petitioner and mark the crates "Khorramshahr," the Iranian port of destination (II R. 3b-4b, 20b); that Rothman would have his trucker deliver the crates to various piers to be specified by petitioner (II R. 4b-5b); and that Rothman would submit the bills for the rags and the trucking expenses to Western National Fabrics, one of Rafati's companies (I R. 14a; II R. 4b-6b, 27b). Subsequently, petitioner, stating he was in the "piece goods business," arranged to have a freight forwarding company handle his shipments (II R. 17b-20b).[3]

Shipments were made in accordance with the above arrangements on numerous occassions in 1958 and 1959 (II R. 3b-5b). Petitioner had the packing crates

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[3] A freight forwarder functions as the agent of an exporter in making out dock receipts, export declarations, and bills of lading, in clearing the export declarations at the customhouse, and in processing the bills of lading with the steamship companies (II R. 19b-20b).

delivered to Rothman and helped pack them with rags (II R. 4b). For each shipment, petitioner supplied the freight forwarder with a letter of instructions which described the material as piece goods (Gov. Exs. 103-161; I R. 28a-34a, 46a; II R. 21b-22b, 29b). Petitioner supplied the forwarder with the value and description to be put in the export declaration (II R. 22b).

2. On April 9, 1959, petitioner was arrested by an agent of the F. B. I., was advised "that he had the right to consult an attorney" and "that anything he [told the agent] could be used against him in a court of law," and was then interviewed concerning the shipments to Iran (I R. 40a; II R. 23b-24b). Petitioner stated that he had gone to work for Rafati after Rafati had shown him the letters of credit calling for the shipment of piece goods to Iran, that in connection with the shipments he had purchased rags for Rafati instead of piece goods, and that he had typed up various instructions concerning the shipments and delivered them to the freight forwarder (II R. 24b-26b). When the agent asked why rags were purchased when the letters of credit called for piece goods, petitioner did not answer (II R. 25b-26b).

At trial, petitioner raised no objection to the agent's testimony concerning the interview.

ARGUMENT

1. Petitioner contends that he was denied his right to a speedy trial in that he was arrested in April

1959, indicted in November 1961, but not tried until May 1966. However, unless the right is asserted by way of a demand for trial, a defendant ordinarily has no grounds for later challenging the legality of the government's delay in bringing him to trial. *Harlow* v. *United States*, 301 F. 2d 361, 367 (C.A. 5), certiorari denied, 371 U.S. 814; *United States* v. *Van Allen*, 288 F. 2d 825 (C.A. 2), certiorari denied, 368 U.S. 836; *United States* v. *Lustman*, 258 F. 2d 475, 478 (C.A. 2), certiorari denied, 358 U.S. 880. A defendant who is content to let charges stand untried for a protracted period on the chance that he might never be brought to trial cannot thereafter complain of the delay. See *United States* v. *Haller*, 333 F. 2d 827, 828 (C.A. 2), certiorari denied, 379 U.S. 921. In the present case, not only did petitioner make no demand for expedition at any time prior to trial, he raised no objection to the delay at any time during the trial. The matter was first raised in the court of appeals. This was plainly too late. Cf. *United States* v. *Sanchez*, 361 F. 2d 824, 825 (C.A. 2); *D'Ercole* v. *United States*, 361 F. 2d 211, 212 (C.A. 2).[4] Nor has petitioner shown any prejudice from the delay. The case was based primarily on documentary evidence.

2. The evidence was clearly sufficient to support the conviction. Petitioner knew that the crates con-

[4] In both of the state cases on which petitioner relies (Pet. 9-10), *People* v. *Wilson*, 8 N.Y. 2d 391, 171 N.E. 2d 310 (1960), and *People* v. *Prosser*, 309 N.Y. 353, 130 N.E. 2d 891 (1955), the matter was raised by the defendant in a pretrial motion to dismiss.

tained rags, for he had ordered the rags from Rothman (II R. 2b-4b) and aided in packing the rags in the crates (II R. 4b). Yet, though he knew the shipments were of rags, he typed and hand-delivered letters of instruction under which the freight forwarder was to list the contents of the crates in the export declarations as specific kinds of piece goods (Gov. Exs. 103-161; I R. 28a-34a, 46a; II R. 21b-22b, 29b), and the forwarder listed the contents of the crates and their value [5] in the export declarations as they were given to him by petitioner (Gov. Exs. 15-74, 103-161; I R. 8a, 32a; II R. 22b, 28b-29b). The jury, which was instructed on the elements of aiding and abetting (I R. 85a-86a), could properly find that petitioner caused the making of false statements as charged in the indictment.

Petitioner argues that the evidence did not demonstrate the materiality of the false statements (Pet. 11-12). It would be difficult to conceive of more material representations in an export declaration than the nature and value of the cargo. While the court below

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[5] Petitioner argues that the valuations were not necessarily false, and demonstrates in one particular example that, by multiplying the net poundage listed in the declaration by the ten cents a pound charged by Rothman and adding the costs of crating and shipping, a figure is reached which closely approximates the listed value (Pet. 7-8). The fallacy of the argument lies in the fact that the net poundage figures were also overstated. In the example on which petitioner relies, fifteen cases were described as containing goods weighing 3,400 pounds. Since the weight of the rags in each case was actually only 100 pounds (Def. Ex. A; II R. 12b), the weight of the shipment was overstated by approximately 1,900 pounds.

noted that the false statements proscribed by 18 U.S.C. 1001 need not be proved to be material, it also observed that in this case "the materiality of the statements seems clear" (Pet. App. A5).

3. Petitioner contends that the trial court committed plain [6] error in allowing the F. B. I. agent to testify concerning petitioner's admission, because, although the agent testified that he had first informed petitioner of his right to consult counsel and of the consequences of speaking (II R. 24b), the agent did not testify specifically that he had also told petitioner that he did not have to say anything.[7] There is no merit to his contention. Petitioner does not suggest that his admission was in any respect involuntary. He was fully apprised of his right to consult with counsel and does not claim that he requested and was denied counsel. The rationale of *Escobedo* v. *Illinois*, 378 U.S. 478, is thus inapplicable. And since the trial took place before this Court's decision in *Miranda* v. *Arizona*, 384 U.S. 436, the principles of that decision are also inapplicable. *Johnson* v. *New Jersey*, 384 U.S. 719.

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[6] Petitioner had not objected to the testimony when it was made, but contends that its admission was "plain error" which the court, under Rule 52(b) of the Federal Rules of Criminal Procedure, should have corrected despite the absence of timely objection.

[7] We do not accept the factual basis of this contention. The agent's report of the interview, which was furnished to defense counsel in accordance with 18 U.S.C. 3500, recites that "Aadal was initially advised that he did not have to make any statement." A copy of this report (Gov. Ex. 3504 for identification) has been lodged with the Clerk of this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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